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EXTENDING THE TIME LIMIT WITHIN WHICH CERTAIN SUITS IN ADMIRALTY MAY BE BROUGHT AGAINST THE UNITED STATES

AUGUST 22, 1949.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOBBS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 483]

The Committee on the Judiciary, to whom was referred the bill (H. R. 483) to extend the time limit within which certain suits in admiralty may be brought against the United States, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 4, after "March 9, 1920," insert "as amended," and following "is" insert "hereby".

STATEMENT

The purpose of the bill is to amend the Suits in Admiralty Act (41 Stat. 525; 46 U. S. C. 741–745) as amended June 30, 1932, so as to relieve certain litigants whose right to sue the United States under the Suits in Admiralty and Public Vessels Acts have become barred by expiration of the pertinent statute of limitations. A brief excursion into the legislative and judicial background is necessary to clarify the merits of the bill which prompt its favorable reporting.

In *Lustgarten* v. *U. S. Shipping Emergency Fleet Corp. et al.* (280 U. S. 320 (1930)), the Supreme Court held that the Admiralty Act precluded suits against the Fleet Corporation and its agents for their maritime torts arising out of the operation of merchant vessels. The decision had the effect of depriving relief to many claimants who had theretofore brought suits against the Corporation or its agents in reliance upon the prevailing theory as to the status of the law, and whose rights to bring suits anew against the United States after the date of the decision had expired. Congress then enacted Public

Law 213, Seventy-second Congress (act of June 30, 1932), which revived for such litigants their rights to institute suits against the United States within a certain time. The law, however, did not legislatively settle the question of exclusivity of remedy. The Supreme Court then, in 1942, in *Brady* v. *Roosevelt Steamship Company* (317 U. S. 575), held that the Suits in Admiralty Act, by furnishing as in personam remedy against the United States, did not free the agent from liability for the torts of its own employees.

This case was followed in 1946 by the Court's decision in *Hust* v. *Moore-McCormack* (328 U. S. 707). These cases together were popularly taken as an endorsement by the highest court in the land of the theory of duality of remedy in all cases. Accordingly, many litigants, relying upon these decisions, brought their suits against the agent only because of the opportunity for a jury trial which many of them preferred. Then the Supreme Court handed down its decisions in *Caldarola* v. *Eckert* (332 U. S. 155 (1947)) and *Cosmopolitan Shipping Co.* v. *McAllister* (— U. S. — (1949)), which clarified, in the opinion of the committee, the rule previously announced so as to make it plain that the agent, while liable for the negligence of its own employees, was not liable for the negligence of the civil-service masters and crews with whom the United States manned the vessels. For the negligence of those, the United States was the only responsible party. The committee believes that litigants should not be made the victims of the legal confusion regarding the proper remedy in such cases, and are not responsible for the conditions brought about by the lack of clarity in the opinions of the Supreme Court. Legislative relief is requisite not only to save to litigants possessing meritorious claims their right to a day in court, but also to settle the question of remedy in future cases.

Since the situation sought to be corrected is analogous in its major aspects to that brought about by the Lustgarten decision, the bill was patterned after Public Law 213, Seventy-second Congress (act of June 30, 1934), with minor adjustments to meet current requirements, and to provide for an exclusivity of remedy bringing an end to uncertainty in choice of defendant. The provision allowing a 1-year period from enactment for the bringing of suits enables the public to become acquainted with its rights. It is important to note that the bill in itself is designed to provide relief only in those cases where suits were dismissed, though timely brought, solely because brought against an improper party, and where the time for suits against the United States under existing law had expired.

In concluding, figures are not available as to the number of claimants who would benefit by the bill, although the number is considered to be relatively few. While such personal injury and cargo claims on Government vessels are insured, 90 percent of the risk is in effect reinsured by the United States, and only the remaining 10 percent is at the risk of the underwriters.

ANALYSIS OF THE BILL

The first proviso makes it plain that the rule of the McAllister and Caldarola cases is to be followed not only in respect of suits against shipping organizations engaged as agents by the United States, but also in respect of suits against the masters of Government vessels as well.

The second proviso gives litigants 1 year after the enactment of the act within which to file suit against the United States, where suits, whether in State or Federal courts, were timely brought under any applicable statute of limitations but have or shall be dismissed solely because improperly brought against any agent engaged by the United States to attend to the business of its vessels or any master of such a vessel.

The final proviso carries forward the effect of section 5 of the 1920 act, as amended in 1932, allowing interest in all suits under the Suits in Admiralty Act from the date suit is commenced. (See the *Wright* case (2d Cir., 1940) 109 F. 2d 699, 701; *National Bulk Carriers v. United States,* (3d Cir., 1948) 169 F. 2d 943, 950; and *Eastern SS. Lines* v. *United States* (1st Cir., 1948) 171 F. 2d 589, 593.) This allowance of interest from the time suit is brought instead of from the date of the entry of judgment as in suits under the Tucker Act, 1887; the Public Vessels Act, 1925; and the Tort Claims Act, 1946, is preserved. Slight changes in phraseology are made in the existing language so that it will be clear that no implied repeal and reenactment of the 1932 amendment is intended.

The following report has been received from the Department of Justice, but it will be observed that the Department bases its comments primarily on the language of another bill (H. R. 4051). So far as H. R. 483 is concerned it is believed that the language suggested by the Department of Justice in respect of the exclusive provision constitutes an immaterial variation in the language of the bill as drawn:

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, April 8, 1949.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 483) to extend the time limit within which certain suits in admiralty may be brought against the United States. A study has also been made of the bill introduced in the nature of a substitute, H. R. 4051.

The primary purpose of both bills is to enlarge the present 2-year statute of limitations contained in section 5 of the Suits in Admiralty Act (47 Stat. 420), by granting an additional 1 year after the enactment of the bill within which suit may be brought against the United States on causes of action where suit has been mistakenly brought against an agent or ship master employed by the former War Shipping Administration. In this respect both bills are identical. In addition, however, the bills contain other provisions respecting the exclusiveness of the claimant's remedy by suit against the United States and the allowance of interest in such suits. In these respects the two bills differ widely.

Both bills are intended to relieve a small number of litigants, whose rights to sue the United States under the Suits in Admiralty and Public Vessels Acts have been permitted by their attorneys to become time barred in consequence of the confusion regarding the absence of liability of the ships' husbands or shore-side agents employed by the Government to operate the accounting and certain other shore-side business of its vessels under the wartime standard form general-agency agreement (GAA 4–4–42, 7 Fed. Reg. 7561, 46 Code of Fed. Regs., 1943 Com. Supp., p. 11427, sec. 306.44). Such ships' husbands or shore-side agents were held by the Supreme Court in *Caldarola* v. *Eckert* (332 U. S. 155), not to be owners pro hac vice—operating owners for the voyage of the Government's vessels—as were the operating agents to whom the Government demised its vessels in peacetime. Not being operating agents in possession and control of the vessels, such general agents, were they employed by private shipowners, would, of course, not be subject to vicarious liability for the negligence of the master and crew engaged to manage and navigate the vessel as agents and em-

ployees of the vessel's operating owner. Counsel for third parties such as seamen and shippers have, however, attempted to maintain that a different rule should be applied to Government agents.

In the earlier case of *Hust* v. *Moore-McCormack* (328 U. S. 707), the Supreme Court without discussion accepted the admission in the agent's answer that it was an operating agent for the Government and held that despite the absence of the common law employer-employee relationship between the agent and the seaman on vessels operated by the Government under general agency, the seaman could bring the statutory Jones Act suits against the agent. No determination was made by the Supreme Court as to the seaman's right to recover in such an action, but if the agent were in fact the operator of the vessel, liability would follow. Prior to the Caldarola case, attorneys representing seamen and other third parties, however, misinterpreted the Hust case as holding not only that a seaman might bring the statutory Jones Act suit against the agent, although the latter was not his employer, but might recover from the agent as if it were in fact operating the vessel so as to be responsible for the negligence of the master and crew. Accordingly, in a few instances, attorneys sued only the agent and failed to join the United States and their claims are now time barred as to the latter, while the former is not liable under the law as established in the Caldarola case.

With respect to the question of the exclusiveness of the remedy by suit against the United States, H. R. 483, with a view to the prevention of any future repetition of such mistakes, expressly declares the remedy provided by the Suits in Admiralty Act to be exclusive of any remedy against an employee, agent, or instrumentality of the United States on account of the same subject matter. H. R. 4051, on the other hand, declares that the remedy by suit against the United States ahall be exclusive for only the period of the recent war ("between December 7, 1941, and June 23, 1947"), thus giving rise to the implication that except for the period specified the remedy shall not be exclusive.

As for the question of interest, the courts of appeals have uniformly held that under section 5 of the act, as amended in 1932, interest runs from the date of the filing of the libel (*The Wright* (2d Cir., 1940), 109 F. 2d 699, 701; *National Bulk Carriers* v. *United States* (3d Cir., 1948), 169 F. 2d 943, 950; *Eastern S. S. Lines* v. *United States* (1st Cir., 1948), 171 F. 2d 589, 593). H. R. 483 expressly retains this existing preferential interest provision of section 5 as opposed to the provisions for interest from the entry of final judgment found in all other acts permitting suit against the United States (Public Vessels Act, 46 U. S. C. 782; Tucker Act and Tort Claims Act, 28 U. S. C. 2411). H. R. 4051, on the other hand, repeals this existing provision of section 5 and grants an even greater preference to claimants who bring suit under the Suits in Admiralty Act by permitting the allowance of interest from the date of the accident. H. R. 4051 excepts, however, the claims which are being reinstated and those reinstated by the 1932 amendment. Either of these methods of computing interest results in the preferential treatment of those suing under the Suits in Admiralty Act and imposes upon the Government an increased liability amounting to many hundreds of thousands of dollars.

If any bill is to be enacted for the purpose of relieving litigants from the bar of the statute of limitations in cases where they erroneously have brought suit against the Government's agent or shipmaster, it is believed essential that it contain declaratory language respecting the exclusive character of the remedy by suit against the United States. This will make it clear that the remedy by such suit is exclusive of any independent suit against any employee, agent, or instrumentality acting for or on behalf of the United States. This clarification can be achieved by amending the first proviso of the bills, commencing on line 8 of page 1, to read as follows:

"That where a remedy is provided by this Act it shall hereafter be exclusive of any other action by reason of the same subject matter against any employee, agent or instrumentality, whether incorporated or unincorporated, acting for or on behalf of the United States in the management and operation of its vessels."

It is further believed that opportunity should be taken to correct the unjustified preference with respect to interest under the Suits in Admiralty Act by bringing the interest provision of that act into harmony with those of the other acts providing for suits against the Government. These other acts contain provisions for interest to be computed from the date judgment is rendered. Only the Suits in Admiralty Act provides that interest may be computed from the date of the commencement of the suit. The suggested change can be achieved by

amending the last proviso, commencing on line 13, page 2 of H. R. 483, and on line 15, page 2 of H. R. 4051, to read as follows:

"That hereafter interest shall be allowed in accordance with Title 28 United States Code, section 2411 on any claim on which suit is brought as authorized by section 2 of this Act."

Incidentally, it is suggested that the enacting clause should, for clarity and accuracy, be amended so that lines 4 and 5 read as follows:

"46 U. S. C. 745, approved March 9, 1920, as amended, is amended to read as follows:"

The Department of Justice has in the past opposed proposals to lift the bar of limitations in cases where claimants who are subject to no disability have misconceived their rights and have failed to institute suit against the United States within the period provided by law. Generally speaking, to relieve claimants in any such circumstances might serve as a precedent for similar action in every case where a claimant has failed to exercise diligence in instituting suit in the manner and within the time limitations provided by law. Likewise, this Department has invariably insisted upon the exclusive character of the remedy by suit against the United States under the Public Vessels and Suits in Admiralty Acts. It has also opposed attempts to provide for interest prior to the entry of judgment in suits against the United States. No reason exists for according preferential treatment to claimants in suits instituted pursuant to the Suits in Admiralty Act.

Accordingly, it is the view of the Department of Justice that the enactment of either of these measures is undesirable. However, if the Congress accords favorable consideration to either measure, it is essential that the suggested amendments be adopted in order to avoid the above-mentioned preferential treatment and huge additional expense to the Government.

This Department has not been advised by the Director of the Bureau of the Budget of the relationship of this report to the program of the President.

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General

CHANGES IN EXISTING LAW

In compliance with clause 2a of rule XIII of the House of Representatives, there is printed below in one column in roman existing law, and in the opposite column in italics the new matter proposed by the bill as introduced to replace existing law:

SECTION 5 OF THE SUITS IN ADMIRALTY ACT, AS AMENDED (47 STAT. 420; 46 U. S. C 745)

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917: *Provided*, That suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises: *Provided further*, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Merchant Fleet Corporation, formerly known as the United States Shipping Board Emergency Fleet Corporation, brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under the Tucker Act of March 3, 1887 (24 Stat. 505; U. S. C., title 28, sec. 250, subdiv. 1), was commenced prior to January 6, 1930, and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this Act, or otherwise not commenced or prosecuted in accordance with its provisions: *Provided further*, That such prior suit must have been commenced within the statutory period of limitation for common-law actions against the United States cognizable in the Court of Claims: *Provided further*, That there shall not be revived hereby any suit at law, in admiralty, or under the Tucker Act heretofore or hereafter dismissed for lack of prosecution after filing of suit: *And provided further*, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder.

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"SEC. 5. Suits as herein authorized may be brought only within two years after the cause of action arises: Provided, That where a remedy is provided by this Act it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: Provided further, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after the enactment of this amendatory Act, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel owned or bare-boat chartered by the United States or against the master of any such vessel: And provided further, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 2 of this Act unless upon a contract expressly stipulating for the payment of interest."